

**REMARKS UNDER 37 CFR § 1.111**

**Formal Matters**

Claims 36-39, 48-50, 52, 54-56, 57-65, 78, 82-84, 87, 89-90, 92-101, 105, 111-113 and 115-119 are pending after entry of the amendments set forth herein. Claims 48-50, 52, 54-56, 58-65, 68-75, 87 and 92-99 are currently withdrawn.

Claims 36-39, 57, 78, 82-84, 89-90, 100-101, 105, 111-119 were examined. Claims 36-39, 57, 78, 82-84, 89-90, 100-101, 105, 111-119 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

**The Office Action**

In the Official Action of March 31, 2006, claims 111 and 112 were objected to as reciting an antenna enclosure while not positively reciting an antenna. In response thereto, Applicants have amended claim 11 to recite that the pre-shaped elongated energy delivery portion comprises an antenna. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the objection to claims 111 and 112 as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 102(e) (Sharkey et al.)**

Claims 57, 100, 101, 113, 114 and 116-119 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Sharkey et al., U.S. Patent No. 6,126,682. Regarding claims 57, 100, 101 and 113, the Examiner asserted that Sharkey et al. discloses a system for ablating an interior tissue region of an organ or duct comprising an ablation tool including an elongated device 18 electrically coupled to a transmission line that is electrically coupled to a source of microwave energy, and an introducer 12 that is not connected to the source of microwave energy. The Examiner further asserted that the introducer 12 has a sharpened distal end for penetrating through a wall of the organ or duct, and a lumen sized and dimension for slidable movement of the elongate [device] therein, the elongate device being configured

to be deployed into the interior of the organ or duct through the sharpened distal end of the introducer with a deployed shape that is substantially straight and at a skewed angular orientation to a longitudinal axis of the introducer.

Applicants respectfully traverse this assertion. Sharkey et al. discloses methods and apparatus for treating intervertebral disc disorders, particularly fissures in the annulus fibrosus, see column 5, lines 52-55. The energy delivery portion 18 (or distal end portion 16) of the catheter 14, referred to as the “intradiscal section”. As the intradiscal section is introduced and advanced into the intervertebral disc, the distal end of the intradiscal section abuts against the abutting and curving and advancing along the inner wall of the annulus, see column 10, lines 10-13. Fig. 4 also clearly shows that the energy delivery portion 16 of the device is not substantially straight when deployed, but is clearly curved. Further, there is no skewed angular orientation of the energy delivery portion of Sharkey et al., as it is radially deformed along the length thereof to from the curvature and to follow around the inner circumference of the annulus. Although the energy delivery portion follows the contours of the inner circumference, it is not parallel thereto, because it is not straight.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 57, 100, 101, 113, 114 and 116-119 under 35 U.S.C. Section 102(e) as being anticipated by Sharkey et al., U.S. Patent No. 6,126,682, as being clearly inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Sharkey et al. in view of Moss et al.)**

Claims 36-39, 78, 82-84, 89-90, 105, 111-112 and 115 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Sharkey et al., U.S. Patent No. 6,126,682, in view of Moss et al., U.S. Patent No. 5,810,803. The Examiner asserted Sharkey et al. discloses a system for ablating an interior tissue region of an organ or duct comprising an ablation tool including an elongated device 18 electrically coupled to a transmission line that is electrically coupled to a source of microwave energy, and an introducer 12 that is not connected to the source of microwave energy. The Examiner further asserted that the introducer 12 has a sharpened distal end for penetrating through a wall of the organ or duct, and a lumen sized and dimension for slidable movement of the elongate [device] therein, the elongate device being configured to be deployed into the interior of the organ or duct through the sharpened distal end of the introducer with a deployed shape that is substantially straight and at a skewed angular orientation to a longitudinal axis of the introducer.

Applicants respectfully traverse this assertion. As noted above, Sharkey et al. discloses methods and apparatus for treating intervertebral disc disorders, particularly fissures in the annulus fibrosus, see column 5, lines 52-55. The energy delivery portion 18 (or distal end portion 16) of the catheter 14, referred to as the “intradiscal section”. As the intradiscal section is introduced and advanced into the intervertebral disc, the distal end of the intradiscal section abuts against the abutting and curving and advancing along the inner wall of the annulus, see column 10, lines 10-13. Fig. 4 also clearly shows that the energy delivery portion 16 of the device is not substantially straight when deployed, but is clearly curved. Further, there is no skewed angular orientation of the energy delivery portion of Sharkey et al., as it is radially deformed along the length thereof to from the curvature and to follow around the inner circumference of the annulus. Although the energy delivery portion follows the contours of the inner circumference, it is not parallel thereto, because it is not straight.

Nor does Moss et al. teach the provision of a device as claimed, wherein an energy delivery portion is delivered through an introducer and is configured to be deployed into the interior of an organ or duct with a deployed shaped that is substantially straight and at a skewed angular orientation to a longitudinal axis of the introducer, as Moss et al. only disclose an ablation catheter wherein the energy delivery portion extends along the longitudinal axis of the catheter that it is a part of.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 36-39, 78, 82-84, 89-90, 105, 111-112 and 115 under 35 U.S.C. Section 103(a) as being unpatentable over Sharkey et al., U.S. Patent No. 6,126,682, in view of Moss et al., U.S. Patent No. 5,810,803, as being inappropriate.

### **Conclusion**

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-118.

Respectfully submitted,  
LAW OFFICE OF ALAN W. CANNON

Date: \_\_\_\_\_

7/5/06

By: \_\_\_\_\_



Alan W. Cannon  
Registration No. 34,977

LAW OFFICE OF ALAN W. CANNON  
834 South Wolfe Road  
Sunnyvale, CA 94086  
Telephone: (408) 736-3554  
Facsimile: (408) 736-3564